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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,469	02/05/2004	Gilbert Menard	03161.001376	7012

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NEW YORK, NY 10112

EXAMINER

MACKEY, JAMES P

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/773,469

Applicant(s)

MENARD, GILBERT

Examiner

James Mackey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9,10 and 13 is/are rejected.
- 7) ☒ Claim(s) 8,11,12 and 14-18 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/5/2004</u> . | 6) <input type="checkbox"/> Other: ____ |

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1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify **the city** and either state or foreign country **of residence** of each inventor. The residence information may be provided on either an application data sheet or supplemental oath or declaration.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, line 1, "the protruding elements" lacks proper antecedent basis in the claim (it should apparently read --the hooking elements--).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bronson (U.S. Patent 1,784,780; Figures 1 and 9-12; page 3, line 94 through page 4, line 26).

Bronson teaches a mould comprising a lower molding part 14 and an upper molding part 12 defining a molding cavity therebetween, at least one of the molding parts being movable between opening and closing positions, wherein the upper molding part includes protruding

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hooking elements 30 each having a pointed free end for hooking a longitudinal end of the molded product, two transversely spaced hooking elements being provided to extend transversely over part of the width of the upper molding part, and wherein the lower molding part has protruding elements 35 cooperating with the hooking elements. Note that recitations in the claims such as “of a tread” (lines 2 and 5 of claim 1) do not recite structure of the claimed apparatus but rather merely recite the intended use of the claimed structure and therefore do not structurally distinguish the claimed apparatus structure; intended use has been continuously held not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530; the manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself, *In re Casey*, 152 USPQ 235; purpose to which apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, *Ex parte Thibault*, 164 USPQ 666; a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, *Ex parte Masham*, 2 USPQ2d 1647.

6. Claims 1-4, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Document 60-89313 (Figures 1-6).

Japan '313 teaches a mould comprising a lower molding part 3 and an upper molding part 2 defining a molding cavity therebetween, at least one of the molding parts being movable between opening and closing positions, wherein the upper molding part includes a protruding hooking element 4 having a hook 6 which extends transversely over the width of the upper molding part, and wherein the lower molding part has raised transverse edges 17 (which are also

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considered to be protruding elements as claimed in claim 10) which cooperate with the hooking element. Note that recitations in the claims such as “of a tread” (lines 2 and 5 of claim 1) do not recite structure of the claimed apparatus but rather merely recite the intended use of the claimed structure and therefore do not structurally distinguish the claimed apparatus structure; intended use has been continuously held not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530; the manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself, *In re Casey*, 152 USPQ 235; purpose to which apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, *Ex parte Thibault*, 164 USPQ 666; a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, *Ex parte Masham*, 2 USPQ2d 1647.

7. Claims 1-4, 6, 7 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by French Patent Document 1,524,052 (Figures 3, 4 and 7-9).

French '052 teaches a mould comprising a lower molding part 6 and an upper molding part 6' defining a molding cavity therebetween, at least one of the molding parts being movable between opening and closing positions, wherein the upper molding part includes a protruding hooking element 25 having a pointed free end 26 for hooking a longitudinal end of the molded product, the hooking element extending transversely over part of the width of the upper molding part. French '052 further teaches a molding and vulcanizing apparatus comprising the mould in combination with progressive demolding means 32. Note that recitations in the claims such as

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“of a tread” (lines 2 and 5 of claim 1) do not recite structure of the claimed apparatus but rather merely recite the intended use of the claimed structure and therefore do not structurally distinguish the claimed apparatus structure; intended use has been continuously held not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530; the manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself, *In re Casey*, 152 USPQ 235; purpose to which apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, *Ex parte Thibault*, 164 USPQ 666; a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, *Ex parte Masham*, 2 USPQ2d 1647.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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10. Claims 1-5, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bronson (U.S. Patent 1,784,780; Figures 1 and 9-12; page 3, line 94 through page 4, line 26) in view of either Keys (U.S. Patent 5,932,153) or Japanese Patent Document 5-111921.

Bronson discloses a vulcanizing mould substantially as claimed, comprising a flat lower molding part 14 and a flat upper molding part 12 defining a molding cavity therebetween, at least one of the molding parts being movable between opening and closing positions, wherein the upper molding part includes protruding hooking elements 30 each having a pointed free end for hooking a longitudinal end of the molded product, two transversely spaced hooking elements being provided to extend transversely over part of the width of the upper molding part, and wherein the lower molding part has protruding elements 35 cooperating with the hooking elements. Bronson does not disclose that the mould is for molding of a tread. Each of Keys and Japan '921 discloses a tread vulcanizing mould comprising flat upper and lower molding parts defining a molding cavity therebetween, at least one of the molding parts being movable between opening and closing positions. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bronson by providing the flat vulcanizing mould as a flat tread vulcanizing mould (to the extent that such a recitation of intended use defines the structure of the claimed mould), as disclosed in either Keys or Japan '921, in order to mould a flat vulcanized tread.

11. Claims 1-4, 6, 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent Document 1,524,052 (Figures 3, 4 and 7-9).

French '052 teaches a mould comprising a lower molding part 6 and an upper molding part 6' defining a molding cavity therebetween, at least one of the molding parts being movable

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between opening and closing positions, wherein the upper molding part includes a protruding hooking element 25 having a pointed free end 26 for hooking a longitudinal end of the molded product, the hooking element extending transversely over part of the width of the upper molding part. French '052 further teaches a molding and vulcanizing apparatus comprising the mould in combination with progressive demolding means 32. French '052 does not disclose that the mould is for molding of a tread. Each of Keys and Japan '921 discloses a tread vulcanizing mould comprising flat upper and lower molding parts defining a molding cavity therebetween, at least one of the molding parts being movable between opening and closing positions. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify French '052 by providing the flat vulcanizing mould as a flat tread vulcanizing mould (to the extent that such a recitation of intended use defines the structure of the claimed mould), as disclosed in either Keys or Japan '921, in order to mould a flat vulcanized tread.

12. Claims 8, 11, 12 and 14-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record does not teach or fairly suggest a tire tread mould wherein the upper molding part has elements for hooking a longitudinal end of the tread, the hooking elements formed by a hook having a free end oriented longitudinally towards the outside of the mould, wherein the hook has an inclines surface opposite its free end to facilitate retraction of the hook, as claimed in claim 8. The prior art of record does not teach or fairly suggest a tire tread mould wherein the upper molding part has elements for hooking a longitudinal end of the tread, the lower molding part having protruding elements to cooperate with the hooking

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elements, wherein the protruding elements of the lower molding part are formed by a hook having a free end oriented longitudinally towards the inside of the mould, as claimed in claim 11, or wherein the protruding elements of the lower molding part comprise a molding surface for a leading edge on the tread to facilitate unhooking from the hooking elements, as claimed in claim 12. The prior art of record does not teach or fairly suggest a molding and vulcanizing apparatus comprising a tire tread mould wherein the upper molding part has elements for hooking a longitudinal end of the tread, and further comprising progressive demolding means for the tread, the progressive demolding means being formed by the end of a plate which is translated on the lower molding part in the longitudinal direction, as claimed in claim 14.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

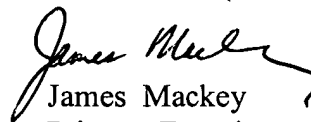
Silvestri (U.S. Patent 5,316,461) discloses a casting mould including progressive demolding means comprising a plate with rollers. Buzzell et al. (U.S. Patent 6,187,247) discloses a mould including progressive demolding means 26-32. Sorensen et al. (U.S. Patent 6,616,884) discloses a mould having cooperating molding parts, one of which includes recessed (undercut) hooking elements 30, 31 for retaining the molded part thereon.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Mackey whose telephone number is 571-272-1135. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James Mackey
Primary Examiner
Art Unit 1722

4/29/06

jpm
April 29, 2006